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Nos. 00-596, 597

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In The

Supreme Court of the United States

LORILLARD TOBACCO CO., et al.,

Petitioners,

v.

THOMAS F. REILLY,
ATTORNEY GENERAL OF MASSACHUSETTS,

Respondent.

ALTADIS U.S.A. INC., et al.,

Petitioners,

v.

THOMAS F. REILLY,
ATTORNEY GENERAL OF MASSACHUSETTS,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

BRIEF AMICUS CURIAE OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit association with 129 corporate members representing a broad cross-section of American and international product manufacturers. These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. Since 1983, PLAC has filed over 525 briefs as amicus curiae in both state and federal courts, including this Court, to present the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product liability. In addition, several hundred of the leading product liability defense attorneys in the country are sustaining (non-voting) members of PLAC. A list of PLAC's corporate members is attached as Appendix A.

PLAC's members include manufacturers of a wide variety of products, including tobacco products, pharmaceuticals, medical devices, pesticides, aircraft, motor vehicles, and chemicals, which are governed by comprehensive federal safety regulations and statutes. Most of those statutes have preemption clauses. PLAC and its members accordingly have a strong interest in assuring the consistent and proper resolution of federal preemption issues. Consequently, PLAC submits this brief to

assist the Court in resolving the preemption issue in this case.[1]

SUMMARY OF ARGUMENT

The First Circuit acknowledged that a "literal reading" of the broad language Congress used in the preemption clause of the Federal Cigarette Labeling and Advertising Act (FCLAA) "would preempt a range of state regulation," including the regulation at issue here. *Consolidated Cigar Corp. v. Reilly*, 218 F.3d 30, 39 (1st Cir. 2000). The Court, however, refused to give force to the plain language of the clause, calling respect for Congress's plain words "uncritical literalism." But judges are not literary critics. They are supposed to implement Congressional directives, not critique, much less reconstruct, them.

The decision below turns the law on its head. It holds that presumptions trump plain language, that the more sweeping the preemption clause the more latitude a court has to narrow it, with the result that a law broadened in 1969 is read to revert to its narrower incarnation in 1965. The interpretation – a tortured rule that "with respect to cigarette advertising" really means "with respect to the content but not the location of cigarette advertising" –

[1] Pursuant to Supreme Court Rule 37.3, letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court. This brief was funded entirely by PLAC and was written entirely by its counsel.

undermines Congress's stated purposes behind the FCLAA, which the First Circuit set out to serve.

The lesson of the Court of Appeals' decision is that courts should not be free to retool federal law they don't like, in the name of presumptions or policy. The Court should make clear that courts must give Congress's chosen words their usual meaning, apply them according to their plain terms, and cannot use presumptions (or any other artifice) as a license to second-guess Congress's chosen means to achieving its stated ends.

ARGUMENT

I. PLAIN MEANING TRUMPS PRESUMPTIONS, NOT VICE VERSA.

"Pre-emption fundamentally is a question of congressional intent." *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (Congressional intent is the "ultimate touchstone" of preemption analysis). Congress's express preemptive intent is gauged first, and best, by Congress's own words. "If the statute contains an express pre-emption clause, the task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress's pre-emptive intent." *CSX Transp. Inc. v. Easterwood*, 507 U.S. 658, 664 (1993).

Those words, when clear, are the end of the matter. When Congress includes in a statute a provision explicitly setting forth its preemptive intent, the scope of the statute's express preemption is "governed entirely by

[that] express language."[2] *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992). When courts examine Congress's words, they must "assum[e] that the ordinary meaning of that language accurately expresses the legislative purpose." *FMC Corp. v. Holliday*, 498 U.S. 52, 57 (1990). "If the intent of Congress is clear, that is the end of the matter; for the court . . . must give effect to the unambiguously expressed intent of Congress." *Id.* (quoting *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)).

Thus, where language is plain, courts must give it full force, and have no business changing its plain meaning by looking to extrinsic aids, whether rules of construction or study of Congressional intent or presumptions. As Justice Scalia put it, the Court's "job is to interpret Congress's decrees of pre-emption neither narrowly nor broadly, but in accordance with their apparent meaning." *Cipollone*, 505 U.S. at 544 (concurring in part and dissenting in part).

Those are bedrock principles, essential to the fair and consistent application of the law. And this Court has applied them with respect to the very preemption clause

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[2] As this Court made clear in *Geier v. American Honda Motor Co.*, 120 S. Ct. 1913, 1919 (2000), this principle governs the force to be given an express preemption clause, but an express preemption provision "does not bar the ordinary working of conflict pre-emption principles." *See also Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (holding "without merit" proposition that "implied pre-emption cannot exist when Congress has chosen to include an express pre-emption clause in a statute").

in the very Act at issue here.[3] In *Cipollone*, this Court held that when Congress chooses broad and general language to describe the state law prohibited, that language must be given full force. It explained that "[t]he phrase '[n]o requirement or prohibition' sweeps broadly and suggests no distinction between positive enactments and common law." 505 U.S. at 521. The Court reasoned that, since state "regulation can be as effectively exerted through an award of damages as through some form of preventive relief," the preemption clause's broad language encompassed common-law actions, even though the clause did not expressly mention common law. *Id.*

The Court rejected efforts to read the phrases "requirement or prohibition" and "state law" narrowly. It pointed out that the preemption clause's language departed from, and expanded, the scope of the earlier clause. Whereas the 1965 Act had barred state-required "statements," the 1969 Act "reaches beyond statements" and broadly barred "[o]bligations 'with respect to the advertising or promotion' of cigarettes." 505 U.S. at 520. The 1969 Act, the Court held, "worked substantial changes in wording," and "altere[ed] the reach" of the preemption clause. *Id.* at 520-21.

The Court thus rejected the use of the presumption against preemption to find ambiguity in plain language,

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[3] The FCLAA's preemption clause provides: "No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter." 15 U.S.C. § 1334(b) (West 2000).

or to narrow the language Congress used. To the contrary, the Court held "there is no good reason to believe that Congress meant less than what it said," *id.* at 522 (internal citations omitted), and it concluded that it must give effect to Congress's plain language.

The Court of Appeals in this case, however, turned the law on its head, and did the opposite of what *Cipollone* did with respect to the same section of the same statute. It began its preemption analysis not with the words of the statute, but with a presumption against preemption. The Court thus held that "the historic police powers of the States [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." 218 F.3d at 38 (quoting *Medtronic*, 518 U.S. at 484-86). The Court then used the presumption against preemption to avoid the literal meaning of unequivocal Congressional language.

The Court acknowledged that a "literal reading of that phrase would preempt a range of state regulation." *Reilly*, 218 F.3d at 39. But the Court imagined hypothetical laws not before it that might be in that range, speculated Congress would not have intended to preempt those hypothetical laws, and so refused to give plain language its plain meaning, holding that would be "hyper-literal" and "uncritical literalism." *Reilly*, 218 F.3d at 39, 40 (citing *Greater New York Metro. Food Council, Inc.*, 195 F.3d 100, 105 (2d Cir. 1999); and *Federation of Adver. Indus. Representatives, Inc. v. Chicago*, 189 F.3d 633, 637 (7th Cir. 1999)).[4]

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[4] The Seventh Circuit draws largely from *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins.*, 514

The presumption against preemption, the Court held, "is particularly strong here" because the state regulations relate to areas of traditional state power like zoning and the welfare of minors. *Reilly*, 218 F.3d at 40. Accordingly, preemption language notwithstanding, Congress really meant "to give such traditional state laws 'wide berth.' " *Reilly*, 218 F.3d at 40 (quoting *Greater New York Metro. Food Council*, 195 F.3d at 110). The now-impregnable presumption must be brought to bear when "Congress speaks to [preemption] with generality." *Reilly*, 218 F.3d at 40 (quoting *Federation of Adver. Indus. Representatives, Inc.*, 189 F.3d at 637). The idea, apparently, is that when Congress acts where states have historically acted, the presumption overcomes Congress's language, and the broader the language Congress chooses to use, the more latitude a court has to use the presumption to limit it. As a result, a ban on "State law with respect to the advertising or promotion" of cigarettes, stated broadly and without limitation, was rewritten to bar only "State law that regulates content, but not any law relating to location or manner, of advertising or promotion" of cigarettes.

U.S. 645 (1995). *See Federation of Adver. Indus. Representatives, Inc.*, 189 F.3d at 637. But *Travelers* concerned ERISA, which has a different structure and history than FCLAA and indeed, an exception to a broad preemption clause for state regulation of insurance. *See* 29 U.S.C. § 1144(a), § 1144(b)(2)(A) (West 2000). Moreover, as *Travelers* (and past ERISA cases) makes clear, ERISA preempts even insurance laws that "*directly affect[ ]*" the ERISA plans sought to be protected from state regulation by the preemption clause. *Traveler's Ins.*, 514 U.S. at 657-58, 663. The regulation here "directly affects" cigarette advertising sought to be protected from state regulation by FCLAA's preemption clause.

That holding is jarring. It permits presumptions to create ambiguity where it does not exist, and then to rewrite and narrow plain and broad preemptive language. We respectfully submit it proves the folly of presumptions generally, and certainly the mischief they can make if not constrained.

A. There Should Be No Presumption Against Preemption In Interpreting Preemption Language.

PLAC respectfully submits that there is no basis for presumptions in any preemption analysis. Congressional intent is Congressional intent. It exists or it doesn't. Presumptions are fictions that do not help determine what Congress intended in any given statute.

Indeed, the use of the presumption has been anything but uniform. This Court has outright rejected any presumption against preemption in areas where Congress has traditionally regulated. *See United States v. Locke*, 529 U.S. 89, 108 (2000) ("an 'assumption' of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence."). In fact, this Court has suggested an opposite presumption – a "presumption of federal pre-emption, based on the primary jurisdiction rationale" – may apply in traditional federal spheres. *See Brown v. Hotel & Restaurant Employees and Bartenders Int'l Union Local 54*, 468 U.S. 491, 502 (1984). As Justice Scalia observed in *Cipollone*, in many preemption cases the Court has "said not a word" about any presumption against preemption, even where

the federal law concerns matters states traditionally regulate.[5] 505 U.S. at 546. Yet in *Medtronic*, the plurality opinion made the presumption central to the preemption analysis, spawning confusion in the lower courts,[6] including the First Circuit in this case. *Medtronic*, 518 U.S. at 486-87. Presumptions that shift with inherently subjective characterizations of law,[7] do not apply consistently in any event, and ultimately are "artificial" (*Locke*, 529 U.S. at 108), ought not to apply at all.

The presumption against preemption also does not serve the federalism purpose that is its apparent source. PLAC does not dispute that state law is important, in spheres traditionally within state power and otherwise.

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[5] *See, e.g., Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995); *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995); *Louisiana Pub. Serv. Comm'n v. Federal Communications Comm'n*, 476 U.S. 355 (1986); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984); *Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982); *Malone v. White Motor Corp.*, 435 U.S. 497 (1978).

[6] *Compare, e.g., Munroe v. Galati*, 938 P.2d 1114, 1120 (1997) (*Medtronic* presumption mandates reading of savings clause to foreclose implied preemption of "no airbag" claim), *with Geier v. American Honda Motor Co.*, 120 S. Ct. 1913, 1919 (2000) ("no airbag" claim preempted despite savings clause); *see Shanklin v. Norfolk S. R.R. Co.*, 173 F.3d 386, 394 (6th Cir. 1999) (*Medtronic* presumption requires a narrow reading of preemption clause to foreclose preemption of inadequate railroad warnings claim), *rev'd*, 529 U.S. 344, 358-59 (2000) (inadequate railroad warning claim expressly preempted).

[7] The sphere in which a law operates can be in the eye of the beholder. For example, in this case, the state claims its law is a matter of zoning and public safety (traditional matters of local concern), but it could just as well be described as a law regulating commerce and speech (federal concerns).

But the importance of state law is irrelevant when federal supremacy is at stake. The " 'relative importance to the State of its own law is not material when there is a conflict with a valid federal law,' for 'any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.' " *Felder v. Casey*, 487 U.S. 131, 138 (1988) (quoting *Free v. Bland*, 369 U.S. 663, 666 (1962)). That rule is nearly as old as the republic:

> [I]t will be immaterial whether those laws were passed in virtue of a concurrent power "to regulate commerce with foreign nations and among the several States," or, in virtue of a power to regulate their domestic trade and police. In one case and the other, the acts of [the State] must yield to the law of Congress * * * .

Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 210 (1824). *Accord Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 108 (1992) ("[u]nder the Supremacy Clause, from which our pre-emption doctrine is derived, any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield.") (internal quotation marks omitted, and citing with approval *Felder* and *Free*, and quoting *DeCanas v. Bica*, 424 U.S. 351, 357 (1976): "[E]ven state regulation designed to protect vital state interests must give way to paramount federal legislation.").[8]

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[8] The supremacy rule assumes, of course, that there is a valid constitutional basis for the federal law. *Cf. United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). The constitutionality of the FCLAA is not at issue in this case.

But if a presumption against preemption has some role to play in interpreting express preemption language, it must be a limited one if Congressional intent is to remain preemption's touchstone. It may aid in interpretation ***only*** where the statutory language is ambiguous and the statutory purpose regarding preemption is indeterminate, ***and*** where the circumstances suggest it would be inconsistent with Congressional intent to supersede state law. *See Cipollone*, 505 U.S. at 545 (opinion of Scalia, J., concurring in part and dissenting in part) (any presumption against preemption "dissolves once there is conclusive evidence of intent to pre-empt in the express words of the statute itself"). In no event should presumptions be used as they were here: as a basis to find ambiguity in unambiguous language, and then as an excuse to change that unambiguous language by rewriting it to say something very different from what it says on its face. For a presumption that gives courts license to rewrite plain language based on their own sense of policy destroys the primacy of Congressional intent, and threatens the balance of powers essential to the federal system. *See* Viet D. Dinh, *Reassessing the Law of Preemption*, 88 Geo. L.J. 2085, 2092 (2000) (misuse of presumptions allows courts to "rewrite the laws enacted by Congress [and] disrupt the constitutional division of power between federal and state governments").

The "interpretation" of the law in this case proves the point.

B. Congress's Plain Language Should Be Respected Here.

Cipollone should have been a roadmap here. It held that this very clause's language is clear and broad, that its amendment history underscored that the broad language was chosen advisedly, and that no presumption permitted the broad language to be narrowed.

The language at issue here is equally broad and equally clear. Just as the phrase "no requirement or prohibition sweeps broadly" is unequivocal and does not permit limitations, the phrase at issue here does too. "With respect to the advertising or promotion of" cigarettes is plain and broad, and does not permit limitations, much less content-but-not-location limitations.

Indeed, the amendment history that forbade a narrow reading in *Cipollone* is at least as strong a bar to creative writing here. The earlier 1965 Act had a narrower preemption clause that said "[n]o statement relating to smoking and health shall be required in the advertising of any cigarettes. . . . " *Cipollone*, 505 U.S. at 514 (quoting Pub. L. 89-92, 79 Stat. 282, § 5(b), as amended, 15 U.S.C. §§ 1331-1340). It thus spoke in narrow terms to required "statements in advertising" – content. The 1969 Act broadened that aspect of the preemption clause just as it broadened the meaning of state law. As *Cipollone* put it, "the later Act reaches beyond statements 'in the advertising' to obligations 'with respect to the advertising and promotion' of cigarettes." 505 U.S. at 520 (plurality). The Court of Appeals' decision ignores the change from 1965 to 1969, and essentially reverts the preemption clause to its 1965 incarnation.

The Court of Appeals reasoned its rewriting of the preemption clause served what it believed was Congress's intent. Even were resort to legislative history a valid way to discern intent from plain language, the Court's selective reading of history lost sight of Congress's real purposes in preempting state cigarette-advertising law.

The Senate Report accompanying the FCLAA explained the Act's express preemption provision should "in no way affect the power of any State . . . with respect to the taxation or the sale of cigarettes to minors, or the prohibition of smoking in public buildings, *or similar police regulations*. It is limited entirely to State or local requirements or prohibitions in the advertising of cigarettes." S. Rep. No. 91-566, *reprinted in* 1970 U.S.C.C.A.N. 2652, 2663 (emphasis supplied).

The Court of Appeals followed a decision of the Seventh Circuit that seized on the first part – the reference to "similar police regulations" – as evidence that Congress meant to preserve matters of "traditional local concern" like the "placement and manner of outdoor advertising." *Federation of Adver. Indus. Representatives*, 189 F.3d at 639; *see also Reilly*, 218 F.3d at 40; *Greater New York Metro. Food Council*, 195 F.3d at 110. But that overlooks the sentence that follows. It makes clear that while states are free to exercise some traditional police powers (taxation, sales, or building air regulations), it cannot regulate advertising.

The purpose for that bar is in the statute itself. Congress enacted the FCLAA to protect "commerce and the national economy" by ensuring that it is "not impeded by

diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health." 15 U.S.C. § 1331(2) (West 2000). As the Ninth Circuit recognized, allowing "every board of health, city, county, and state in this country [to] regulate[ ] the location of tobacco advertisements" is exactly the kind of regulation that would "frustrate" the purpose of the FCLAA by "imped[ing]" the national economy. *Lindsey v. Tacoma-Pierce County Health Dep't*, 195 F.3d 1065, 1074 (9th Cir. 1999).

The First Circuit admitted as much; upholding these regulations, it acknowledged, "may create . . . diverse, nonuniform, and confusing advertising standards" like those condemned in the FCLAA. *Reilly*, 218 F.3d at 41 (internal quotation marks omitted). It dismissed the problem, however, reasoning these are not "the kind of" conflicting standards that concerned Congress. "[D]ivergent" tobacco advertising restrictions "are indistinguishable from the existing zoning regulations in place throughout the country." *Id.* at 41. Since tobacco advertisers must already consult local zoning regulations to determine how to bring their advertisements into compliance, the Court here (*id.* at 41), like the Second Circuit, saw "no reason to treat the location restrictions before us any differently." *Greater New York Metro. Food Council*, 195 F.3d at 109.

With all due respect to the First Circuit, it misunderstands the problem Congress sought to avert. The preemption clause does not concern itself with zoning regulations of general application. It speaks to cigarette-specific prohibitions or requirements "based on smoking and health." It thus makes exactly the distinction the First

Circuit rejects: it permits states to have zoning regulations governing all advertising based on whatever concerns govern such decisions generally, but it forbids "prohibitions" or "requirements" that single out cigarette advertising or promotion "based on smoking and health."

Congress made that distinction for good and clear reasons. Congress preempted state and local regulations "to avoid the chaos created by a multiplicity of conflicting regulations." S. Rep. No. 91-566, *reprinted in* 1970 U.S.C.C.A.N. 2652, 2663. Such chaos, Congress judged, would "impede" national commerce, thus subverting FCLAA's crucial economic goals. *See* 15 U.S.C. § 1331(2). This judgment was Congress's prerogative to make, based on its concern for the consequences of local and diverse advertising regulations on interstate commerce in an important industry.

To illustrate the problem if the preemption clause were rewritten as the First Circuit proposes, imagine a tobacco advertiser hoping to promote its product in California.

California state law permits billboards and signs anywhere beyond a 1,000-foot radius of public playgrounds and all public or private elementary, junior, and high schools. *See* CAL. BUS. & PROF. CODE § 22961(a) (West 2000). Some local ordinances, however, require the advertising ban around schools to extend further geographically, or to apply to a larger number of schools. For example, billboards in Berkeley must be located at least 1,400 feet from "any" school. *See* BERKELEY, CAL., CODE § 20.66.030 (1998). That would appear to include post-secondary schools not included in the state law. In Brentwood, the

prohibited area stretches to 1,600 feet, but only around elementary and secondary schools. *See* BRENTWOOD, CAL., CODE § 8.36.020 (2000).

Some city ordinances ban tobacco advertising around other types of places or institutions. Los Angeles bans advertising within a 1,000-foot radius of residential zones, religious institutions, entertainment parks, youth centers, public parks, or playgrounds, but only if the advertisements would be publicly visible. *See, e.g.*, LOS ANGELES, CAL., CODE ch. IV, art. 5.2.5, § 45.22(A) (1998). Other cities ban advertisements outright "in publicly visible locations." OAKLAND, CAL., CODE tit. 14, ch. 14.04.280 § 1602 (1998). National City apparently *permits* tobacco advertising around schools (so only the state law would operate there), unless that tobacco advertising is located "within two feet of any candy, snack, or non-alcoholic beverage display inside stores or businesses that are located within one thousand feet of schools, playgrounds, or playing fields." NATIONAL CITY, CAL., CODE tit. 9, ch. 9.38.040(b) (2000).

Then there are the exceptions to the rules. In Oakland, for example, the advertiser could place a billboard where it is "publicly visible" *if* it is placed on property designated "Business Mix" according to a local land use plan, *and* it is within a geographical area bound by certain specified streets within the Central Business District. However, that exception will not apply if it is within a 1,000-foot radius of, among other things, schools and places of worship. *See* OAKLAND, CAL., CODE § 1603(a)(1). Additionally, the advertiser could post a billboard inside a stadium, arena, or amphitheater within a restricted zone in Los Angeles so long as it is not visible from the

outside of the building. *See* LOS ANGELES, CAL., CODE § 45.23(E). Of course, if the advertiser did choose to advertise in a stadium in Los Angeles, he would still need to ensure that it did not run afoul of the state's prohibitions relating to schools and public playgrounds.

This glut of conflicting regulations comes from just four tobacco-specific provisions from four local tobacco ordinances in one state. Many other communities in California and across the country have enacted their own idiosyncratic tobacco-specific advertising restrictions.[9]

It may be that some advertiser would have the resources and stamina to determine every state and local cigarette advertising ordinance, reconcile conflicting rules of overlapping state, county, and local regulatory authorities where possible, locate every school (and religious institution and park and Coke machine and whatever else) and measure the conflicting distances, and then apply the exceptions, and then advertise its product in whatever space (if any) is left. But more likely – and what in truth the state regulators intend – the advertiser will simply give up and not advertise cigarettes. Congress clearly forbade state laws banning cigarette advertising. Why, in an Act expressly intended to protect "commerce and the national economy" by ensuring that it is "not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations" (15 U.S.C. § 1331(2)

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[9] *See, e.g.*, ANTIOCH, CAL., CODE tit. 9, ch. 5, art. 5, § 9-5.519 (1999); SAN DIEGO, CAL., CODE art. 8, Div. 3, § 58.0303 (1998); DENVER, COLO., CODE tit. II, ch. 24, art. 1, div. 1, § 24-14.5 (1998); ATLANTIC CITY, N.J., CODE part II, ch. 208, art. I, § 208-1 (1998).

(West 2000)), would Congress allow "this kind of" regulatory chaos that has the same effect?

CONCLUSION

The judgment of the Court of Appeals should be reversed.

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Respectfully submitted,

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Kraft Foods

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Monsanto Company/G.D. Searle & Co.

Niro Inc.

Nissan North America, Inc.

Novartis Pharmaceuticals Corporation

O. F. Mossberg & Sons, Inc.

Otis Elevator Company

PACCAR Inc

Panasonic Company

Pentair, Inc.

Pfizer Inc.

Philip Morris Companies Inc.

Polaris Industries, Inc.

Porsche Cars North America, Inc.

Procter & Gamble Company, The

Raymond Corporation, The

Raytheon Aircraft Company

Rheem Manufacturing

RHI Refractories America

RJ Reynolds Tobacco Company

Schindler Elevator Corporation

SCM Group USA Inc

Sears, Roebuck and Co.

Shell Oil Company

Sherwin-Williams Company, The

Siemens Corporation

Smith & Nephew, Inc.

Snap-on Incorporated

Sofamor Danek, Medtronic Inc.

Solutia Inc.

Sturm, Ruger & Company, Inc.

Subaru of America, Inc.

Synthes (U.S.A.)

Textron Inc.

Thomas Built Buses, Inc.

Toro Company, The

Toshiba America Incorporated

Toyota Motor Sales, USA, Inc.

TRW Inc.

UST (U.S. Tobacco)

Viacom Inc.

Visteon Corporation

Volkswagen of America, Inc.

Volvo Cars of North America, Inc.

Vulcan Materials Company

Whirlpool Corporation

Wilbur-Ellis Company

Wilson Trailer Company

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